

General Information Letter: Presence of taxpayer-owned equipment within the State for purposes of providing services to customers.

May 15, 1998

Dear:

This is in response to your letter dated April 26, 1998, in which you request a General Information Letter. Your letter contained questions involving a variety of tax fields. This letter will only contain an answer to the income tax question. The other questions will be answered by the corresponding areas of the department. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

This is the request of original request dated January 21, 1998. I am writing in regards to several Business Tax issues:

1. State Tax Return Preparation and Sales Tax Collection

Does xxxxxxxx xxxxxxxxxxxxxx, an Arizona Corporation, have any responsibility to charge any tax on its services or leased equipment to its Illinois based customers? Do we have any responsibility to the State of Illinois for any sales, use, business privilege, or other taxes and subsequent reporting?

To assist you in making this determination I will offer a brief history of our business. As a broker for Translation and Interpretation services we procure Translators and Interpreters from a database of over 3500 people across the United States. Additionally we will begin offering this year a lease program to some of our customers on a patented telephone which permits two people of different languages to converse face-to-face via an off-site Interpreter. The phone has two handsets and is programmed to search out database and connect with an interpreter at the touch of three buttons in a matter of minutes. Because we are an Arizona Corporation doing business around the country we have been advised by our CPA to

contact each city, county and state government we plan on doing business in for a determination of what our responsibilities are.

It is our intent to begin soliciting our services in the Illinois area and for this reason we would appreciate a determination under your Illinois area and for refinement of our now patented phone and our associated computer software support system as most sales were test driven with very little if any revenue. However, now that our patent has been approved, new corporate officers have been selected and in place, and sales are envisioned, we need to resolve this issue.

2. Occupational License

It has come to our attention that while services in most States/Local governments are not taxed like retail sales, some have a requirement that service based companies pay a tax on services by purchasing an annual Occupational License. Does the State of Illinois require an Occupational License?

3. Business License

We currently have no physical offices in the state of Illinois and no plans exist to open any. Our sales are generated through the Internet, mailings, telephonic inquiries, and soon to be a distributor who will only procure the sales of services and leases. The billing for services will remain a function of xxxxxxxx xxxxxxxxxxxxxxxx xx xxxxxxxx. As an Arizona Corporation what are the regulations regarding the necessity for a business license?

4. Property Tax

The only property that xxxxxxxx xxxxxxxxxxxxxxxx will have in Illinois will be the xxxxxxxx xx leased by our customers. Will we be required to pay any property tax?

5. Income Tax

Is there any State Income Tax? If so, do we as an Arizona Corporation have any responsibility to report and pay Income Tax?

6. Other Tax or Reporting Requirements

Please advise if there are any other requirements or taxes not mentioned above.

Department Analysis

The State of Illinois does have an income tax entitled the Illinois Income Tax Act ("IITA") which can be found at 35 Illinois 5/101 et seq.. This imposes a tax upon both resident individuals and resident businesses, as well as non-residents earning revenue in Illinois. Section 201 of the IITA states in pertinent part:

(a) In general. A tax measured by net income is hereby imposed on every individual, corporation, trust and estate for each taxable year ending after July 31, 1969 on the privilege of earning or receiving income in or as a resident of this State. Such tax shall be in addition to all other occupation or privilege taxes imposed by this

State or by any municipal corporation or political subdivision thereof.

(b) Rates. The tax imposed by subsection (a) of this Section shall be determined as follows:

(8) In the case of a corporation, for taxable years beginning after June 30, 1989, an amount equal to 4.8% of the taxpayer's net income for the taxable year.

(c) Beginning on July 1, 1979 and thereafter, in addition to such income tax, there is also hereby imposed the Personal Property Tax Replacement Income Tax measured by net income on every corporation (including Subchapter S corporations), partnership and trust, for each taxable year ending after June 30, 1979. Such taxes are imposed on the privilege of earning or receiving income in or as a resident of this State. The Personal Property Tax Replacement Income Tax shall be in addition to the income tax imposed by subsections (a) and (b) of this Section and in addition to all other occupation or privilege taxes imposed by this State or by any municipal corporation or political subdivision thereof.

(d) Additional Personal Property Tax Replacement Income Tax Rates. The personal property tax replacement income tax imposed by this subsection and subsection (c) of this Section in the case of a corporation, other than a Subchapter S corporation, shall be an additional amount equal to 2.85% of such taxpayer's net income for the taxable year, except that beginning on January 1, 1981, and thereafter, the rate of 2.85% specified in this subsection shall be reduced to 2.5%, and in the case of a partnership, trust or a Subchapter S corporation shall be an additional amount equal to 1.5% of such taxpayer's net income for the taxable year.

The question is whether your corporation would have nexus with Illinois so as to be liable for these taxes. Based upon the information you provided in your letter it appears that your company would be required to pay Illinois income tax. Section 304 of the IITA concerns the business income of persons other than residents, and states in part:

(a) In general. The business income of a person other than a resident shall be allocated to this State if such person's business income is derived solely from this State. If a person other than a resident derives business income from this State and one or more other states, then, except as otherwise provided by this Section, such person's business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of the property factor (if any), the payroll factor (if any) and 200% of the sales factor (if any), and the denominator of which is 4 reduced by the number of factors other than the sales factor which have a denominator of zero and by an additional 2 if the sales factor has a denominator of zero.

(C) Sales, other than sales of tangible personal property, are in this State if:

(i) The income-producing activity is performed in this State;
or

(ii) The income-producing activity is performed both within and without this State and a greater proportion of the income-producing activity is performed within this State than without this State, based on performance costs.

The presence of the xxxxxxxx telephones in Illinois would subject your company to the Illinois income tax unless the number was de minimis. However, since your company intends to market your services in Illinois it seems unlikely that their presence would be deemed de minimis. Additionally, the presence of the distributor could subject your company to Illinois income tax.

Nor would your representative be protected by Public Law 86-272 (found at 15 USCA §381) which only concerns the sale of tangible personal property. Accordingly, based upon the information supplied in your letter, your company would be required to pay the Illinois income tax.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian
Associate Attorney (Income Tax)